

REPRESENTATIVE FOR PETITIONER: Randal J. Kaltenmark, Barnes & Thornburg, LLP  
REPRESENTATIVE FOR RESPONDENT: Jess R. Gastineau, Office of Corporation Counsel

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Ingredion Inc.,	)	Petition Nos.: 49-101-11-1-7-00234-19
	)	
Petitioner,	)	Parcel No.: A121554
	)	
v.	)	County: Marion
	)	
Marion County Assessor,	)	Assessment Year: 2011
	)	
Respondent.	)	

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**January 30, 2020**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. Ingredion filed a refund claim for the 2011 assessment year arguing that it was entitled to a refund for an overpayment of personal property taxes because the Assessor had discovered the overpayment and was required by law to process a refund. While we are skeptical that we have the authority to hear such a claim given recent changes in the law, we still conclude that Ingredion is not entitled to a refund because it failed to file a timely amended return.

**PROCEDURAL HISTORY**

2. Ingredion filed its 2011 personal property return on May 16, 2011. On April 4, 2014, the Assessor sent a letter informing Ingredion that its 2011, 2012, and 2013 personal property

returns were being audited. The Assessor subsequently issued notices of change for the 2012 and 2013 assessment years, but not for 2011.

3. Ingreddion, believing that it had overpaid personal property taxes for the 2011 assessment year, filed a Form 17T refund claim on May 7, 2015.
4. As of August 7, 2018, the County had yet to rule on this refund claim. For that reason, Ingreddion sought a writ of mandamus in Marion Superior Court. The court granted that request on January 14, 2019, ordering the Marion County Assessor, Auditor, and Treasurer collectively to issue a written approval or denial of the refund claim within 30 days.
5. The Marion County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 denying the refund claim on January 25, 2019. Ingreddion appealed this denial to the Board.
6. Both parties filed motions for summary judgment. They designated the following evidence in support of their motions:

(No exhibit designation)	Affidavit of Bart Burges
Pet’r Ex. 1:	2011 Personal Property Return,
Pet’r Ex. 2:	2012 Personal Property Return,
Pet’r Ex. 3:	2013 Personal Property Return,
Pet’r Ex. 4:	Amended 2013 Personal Property Return,
Pet’r Ex. 5:	April 4, 2014 Marion County Assessor audit initiation letter,
Pet’r Ex. 6:	April 14, 2015 Marion County Assessor audit result letter,
Pet’r Ex. 7:	2012 Form 113 Notice of Assessment/Change,
Pet’r Ex. 8:	2013 Form 113 Notice of Assessment/Change,
Pet’r Ex. 9:	May 7, 2015 letter and supporting materials requesting refund for 2011,
Pet’r Ex. 10:	2012 Form 130 Appeal,
Pet’r Ex. 11:	2013 Form 130 Appeal,
Pet’r Ex. 12:	2013 Form 114 Notice of Hearing,

Pet'r Ex. 13:	2012 Form 114 Notice of Hearing,
Pet'r Ex. 14:	2012 Form 115,
Pet'r Ex. 15:	2013 Form 115,
Pet'r Ex. 16:	2012 Form 131 Petition for Review,
Pet'r Ex. 17:	2013 Form 131 Petition for Review,
Pet'r Ex. 18:	Excerpts from 1971 Addition and Revisions to Rules and Regulations (Indiana),
Pet'r Ex. 19:	Excerpts from 1978 Indiana Administrative Code,
Pet'r Ex. 20:	Excerpts from 1981 Cumulative Supplement to Indiana Administrative Code,
Pet'r Ex. 21:	Excerpts from 1990 Cumulative Supplement to Indiana Administrative Code,
Pet'r Ex. 22:	Excerpts from 2011 Supplement to Indiana Administrative Code,
Pet'r Ex. 23:	Excerpts from 1961 Indiana Code,
Pet'r Ex. 24:	Excerpts from 1961 Indiana Code,
Pet'r Ex. 25:	Excerpts from 1975 Indiana Code,
Pet'r Ex. 26:	Excerpts from 1983 Indiana Code,
Pet'r Ex. 27:	Excerpts from 2006 Indiana Code,
Pet'r Ex. 28:	January 14, 2019 order from Marion Superior Court,
Pet'r Ex. 29:	2011 Form 115,
Pet'r Ex. 30:	2011 Form 131 Petition for Review.
Resp't Ex. 1	Affidavit of Nicholas Getz,
Resp't Ex. 2.	October 9, 2017 letter to Marion County Assessor.

7. The Board did not inspect the subject property.
  
8. The record also includes the following: (1) all pleadings, briefs and documents filed in the current appeals; and (2) all orders and notices issued by the Board or our designated Administrative Law Judge.

#### **FINDINGS OF FACT**

9. As discussed above, the Assessor initiated an audit of Ingedion's 2011 personal property return, but never completed that audit. Ingedion claims that it actually overpaid taxes for that year, and thus is entitled to a refund. Ingedion submitted

those findings in a report to the Assessor's representative, TMA, on June 30, 2014. *Pet'r Ex. 1, 5, 9.*

10. Ingreddion initiated this appeal by filing a Form 17T claim for refund. In its January 14, 2019 order requiring the County to act on Ingreddion's refund claim, the Marion Superior Court stated:

18. A taxpayer may appeal the denial of a refund only after a final determination disapproving the taxpayer's property tax refund claim has been made by the county auditor, county treasurer, or county assessor. *See*, Ind. Code § 6-1.1-26-3(b).

19. If the claim for refund is denied by either the county auditor, county treasurer, or the county assessor, the claimant may appeal that decision to the Indiana Board of Tax Review ("IBTR"). *Id.*

The cited statute, Ind. Code § 6-1.1-26-3, was repealed effective July 1, 2017 by *P.L.232-2017*. This same act codified Ind. Code § 6-1.1-26-2.1, which provides that:

If the county auditor, the county assessor, or the county treasurer denies a refund, the county auditor shall send a notice to the claimant. The claimant may, within forty-five (45) days of the notice of denial, file an original action claiming a refund in a court of competent jurisdiction in the county where the property is located. I.C. § 6-1.1-26-2.1(d).

#### CONCLUSIONS OF LAW

11. Both parties have filed motions for summary judgment. Ingreddion argues that Ind. Code § 6-1.1-9-10 requires the Assessor to refund overpayments of property taxes. The Assessor argues that Ingreddion should have filed an amended return, and that by failing to do so, it missed its opportunity to change its self-reported assessment. We agree with the Assessor. But we first address whether we have the authority to hear this appeal.
12. The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Finance*, 761 N.E.2d 904 (Ind. Tax Ct. 2002)

(Citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 Ind. Tax Ct. 1999). As discussed above, although the Board previously had the authority to hear refund claims, the General Assembly extinguished that authority on July 1, 2017. More recently, the Indiana Court of Appeals seems to suggest that refund claims stemming from before the new statute was enacted may still be appealed to the Board. See *Muir Woods Section One Ass'n v. Fuentes*, 2019 Ind. App. LEXIS 546 (Ind. Ct. App. Dec. 12, 2019) (finding that the court of general jurisdiction was not the appropriate place to determine whether refund claims stemming from the 2006, 2007, and 2009 tax years had been properly satisfied). *Muir Woods* is somewhat distinguishable from the case at hand, because in that case the Court of Appeals determined that the refund claims had not been denied. *Id at 15*. In this case, the claims were clearly denied by the county. And this denial occurred after the enactment of Ind. Code § 6-1.1-26-2.1, which provides that such denials are appealed to a court of competent jurisdiction. Thus, we are skeptical that we have authority to hear Ingreption's refund claims. Nevertheless, we address those claims because we find that Ingreption's legal theory ultimately fails regardless.

13. Ingreption relies on Ind. Code § 6-1.1-9-10 which states:
  - (a) If in the course of a review of a taxpayer's personal property assessment under this chapter an assessing official or the assessing official's representative or contractor discovers an error indicating that the taxpayer has overreported a personal property assessment, the assessing official shall:
    - (1) adjust the personal property assessment to correct the error; and
    - (2) process a refund or credit for any resulting overpayment.

Based on this statute, Ingreption argues that because the Assessor initiated an audit, he was required to process and issue a refund upon discovery of an overpayment. But the statute does not provide a mechanism for appealing an Assessor's action or lack thereof. As Ingreption points out, "in construing a statute, it is just as important to recognize what the statute does not say as it is to recognize what it does say." *City of Evansville v. Zirkelbach*, 662 N.E.2d 651, 654 (Ind. Ct. Appl. 1996).

14. Generally, if a taxpayer discovers an error in their personal property return, they have twelve months to file an amended return under I.C. § 6-1.1-3-7.5(a). Ingreption did not file an amended return. We do not find it likely that the General Assembly intended to waive this requirement simply because an assessor initiated an audit. Ingreption argues that “[b]ecause assessing officials have three years to review and assess for underpayments of tax, the Legislature provided taxpayers with the equal opportunity to obtain refunds during that three-year period.” *Pet’r Br. at 10*. But if the Legislature had really intended for assessors and taxpayers to be on equal footing, it simply could have extended the deadline to file an amended return to three years. The fact that it chose not to do so is telling. Ingreption would have us hold that if an audit has been initiated by an assessor, then a taxpayer may bypass the amended return deadline simply by informing the assessor of an error and thus precipitating a “discovery” of that error. We do not believe the General Assembly intended to eviscerate the amended return deadline in such a manner.<sup>1</sup> Instead, we agree with the Assessor that had Ingreption wished to amend its personal property return, it should have done so within the timeline of I.C. § 6-1.1-3-7.5(a).<sup>2</sup>

### CONCLUSION

15. Ingreption initiated this appeal as a claim for refund. While we are skeptical that we have authority to hear such a claim after the passage of I.C. § 6-1.1-26-2.1, we nevertheless address Ingreption’s claim. We find that I.C. § 6-1.1-9-10 is not intended as a mechanism to bypass the one year amended return deadline of I.C. § 6-1.1-3-7.5(a). Because

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<sup>1</sup> In addition, under the facts presented we are skeptical that Ingreption has established that the error was discovered “in the course of a review” of the assessment. But we need not address this issue because we conclude that Ind. Code § 6-1.1-9-10 does not create an issue that a taxpayer can appeal.

<sup>2</sup> The refund statute is not an alternative method of challenging an assessment. The refund statute is a method of challenging how the tax liability, based on an already decided assessment, is calculated, and if successful, compelling a refund of an overpayment.

Ingredion failed to file an amended return, we are compelled to enter summary judgment in favor of the Assessor.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.